

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

JOHN O KALU,	:	Civil No. 3:19-CV-01621
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
MR. SPAULDING, WARDEN OF FCI-ALLENWOOD, <i>et al.</i> ,	:	
	:	
	:	
Defendants.	:	Judge Jennifer P. Wilson

ORDER

AND NOW, on this 30th day of March, 2021, for the reasons set forth in the accompanying memorandum, **IT IS ORDERED THAT:**

1. Defendants’ motion to dismiss and for summary judgment (Doc. 21) is granted in part and denied in part.
2. Kalu’s retaliation claim against DHO Bittenbender is dismissed with prejudice.
3. Kalu’s claims against Warden Spaulding are dismissed without prejudice.
4. Within twenty-one (21) days from the date of this Order, Plaintiff may file an amended complaint as to his claims against Warden Spaulding. Plaintiff must also replead his claims against Lt. Middernatch if he wishes to proceed with those claims.
5. The amended complaint shall bear the same case number presently assigned to this action, shall be labelled as the “Amended Complaint,” and shall be direct, concise, and shall stand alone without any reference to any document filed in this matter. See Fed. R. Civ. P. 8(d).

6. Should Plaintiff fail to file a timely amended complaint, this matter will proceed exclusively as to Kalu's sexual assault claim against Lt. Middernatch.
7. The Clerk of Court shall forward to Plaintiff two (2) copies of this court's prisoner civil-rights complaint form which Plaintiff shall use in preparing his amended complaint.
8. Defendants' motion for summary judgment based on Kalu's failure to exhaust his available administrative remedies is denied.

s/ Jennifer P. Wilson
JENNIFER P. WILSON
United States District Court Judge
Middle District of Pennsylvania